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**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

In re:

PG&E CORPORATION

-and-

**PACIFIC GAS AND
ELECTRIC COMPANY,**

Debtors.

- ☐ Affects PG&E Corporation
- ☐ Affects Pacific Gas and Electric Company
- ☒ Affects Both Debtors

*All papers shall be filed in the Lead Case,
No. 19-30088 (DM)

Case No. 19-30088 (DM)

Chapter 11

(Lead Case)

(Jointly Administered)

**OBJECTION TO EX PARTE
MOTION OF THE FIRE
VICTIM TRUSTEE PURSUANT TO
FEDERAL RULE OF BANKRUPTCY
PROCEDURE 2004 FOR ENTRY OF
AN ORDER AUTHORIZING
SERVICE OF SUBPOENAS ON THE
SUBROGATION WILDFIRE
TRUST, SUBROGATION
WILDFIRE CLAIMANTS, AND
INSURERS WITH CLAIM FILES**

[NO HEARING REQUIRED per L.B.R.
2004-1(a)]

1 The Subrogation Wildfire Trust respectfully submits this Objection to the *Ex Parte Motion of*
2 *the Fire Victim Trustee Pursuant to Federal Rule of Bankruptcy Procedure 2004 for Entry of an*
3 *Order Authorizing Service of Subpoenas on the Subrogation Wildfire Trust, Subrogation Wildfire*
4 *Claimants, and Insurers with Claim Files* (“**Motion**”).

5
6 1. Through the Motion, the Fire Victim Trustee¹ requests authority to serve a subpoena
7 on the Subrogation Wildfire Trust seeking broad categories of documents and information that the
8 Fire Victim Trust knows the Subrogation Wildfire Trust does not have. Moreover, it erroneously
9 imputes the Fire Victim Trust’s delay in paying individual fire victims on the alleged
10 “intransigence” of the Subrogation Wildfire Trust, among other parties, in producing information.
11 (Motion at 7:13-14.) Nothing could be further from truth with regards to the Subrogation Wildfire
12 Trust.
13

14 2. Indeed, as subsequently acknowledged in the Fire Victim Trust’s supplement to the
15 Motion [Dkt. No. 9514] filed four days after the Motion (the “**Supplement**”), the Subrogation
16 Wildfire Trust has worked cooperatively with the Fire Victim Trust from its initial outreach to
17 develop an agreed process for production of information within the Subrogation Wildfire Trust’s
18 possession. The Subrogation Wildfire Trust seeks only to ensure that its production of information
19 to the Fire Victim Trust accords with the Subrogation Wildfire Trust’s obligations to safeguard
20 information entrusted to it by its beneficiaries pursuant to its enumerated responsibilities and legal
21 obligations.
22

23 3. The Subrogation Wildfire Trust remains hopeful that it can reach agreement with the
24 Fire Victim Trust on the terms of that production, which would obviate the need for the Court to
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26
27 ¹ Capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Motion or, if not
28 defined in the Motion, in the Debtors’ and Shareholder Proponents’ Joint Chapter 11 Plan of Reorganization dated June
19, 2020 [Dkt. No. 8048] (the “**Plan**”).

1 resolve the Motion with respect to the Subrogation Wildfire Trust and for the Fire Victim Trust to
2 serve any subpoena on the Subrogation Wildfire Trust. However, the Subrogation Wildfire Trust
3 submits this objection in order to preserve its rights in the event agreement cannot be reached.

4 **1. The Motion is Unnecessary, Will Cause Delay, and Impose Undue Burden and**
5 **Expense.**
6

7 4. Prior to filing its Motion, the Fire Victim Trust contacted the Subrogation Wildfire
8 Trust to request certain information in its possession. In particular, the Fire Victim Trust requested
9 updates to claims information reported to the trust by subrogation insurance carriers. That
10 information had initially been provided to the Court, the Debtors and the official committees by
11 subrogation claimants as “Attachment 1’s” to their proofs of claim. The claim data had been
12 updated at various points throughout these cases, and, prior to the formation of the Subrogation
13 Wildfire Trust, had been provided by other parties to the Fire Victim Trust and/or the TCC.
14

15 5. Even though there was no pending subpoena compelling production of such
16 information, the Subrogation Wildfire Trust worked cooperatively in an effort to negotiate the terms
17 of the production of that information. It has invested significant time, effort and expense in
18 negotiating a stipulation that would provide the Fire Victim Trust the information it claims it needs,
19 while at the same time complying with the confidentiality, privacy, and other restrictions to which
20 the Subrogation Wildfire Trust is subject.
21

22 6. If the parties successfully negotiate the few remaining open points and the Court
23 approves it, the proposed stipulated agreement will provide for the production of twelve clearly
24 defined data points, including payment amounts by available coverage categories. The parties were
25 close to reaching an agreed stipulated process when the Fire Victim Trust unilaterally filed the
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28

1 Motion.² To that end, the Supplement notes that if the Fire Victim Trust and Subrogation Wildfire
2 Trust reach agreement on a voluntary production, the Motion will be dismissed *without prejudice* as
3 to the Subrogation Wildfire Trust.

4 7. The Motion is counter-productive because, compared to the voluntary process the
5 two trusts had been discussing, the Motion seeks far broader and largely irrelevant information
6 through a litigious process that is likely to further delay production of relevant information (and
7 therefore payments to victims), and subject the Subrogation Wildfire Trust to undue burden and
8 expense.

10 8. Furthermore, instead of limiting its request to information within the Subrogation
11 Wildfire Trust's possession, the Fire Victim Trust's proposed subpoena also requires the production
12 of "Claim Files" and "Claim-Related Documents for all Insured Fire Victims" -- items the Fire
13 Victim Trustee is well aware the Subrogation Wildfire Trust does not have in its possession and
14 cannot produce. The Subrogation Wildfire Trust is informed that representatives of many of the
15 insurers who may be in possession of that information have been cooperating with the Fire Victim
16 Trust, have already voluntarily produced much of the claims information requested by the Fire
17 Victim Trust, and have been preparing to produce additional information in response to
18 supplemental requests. All that the Subrogation Wildfire Trust has is certain data, as the parties
19 have already agreed in the draft proposed stipulation.
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24 ² Despite the ongoing discussions, the Fire Victim Trust did not provide, either as a basic requirement of due process or
25 even as a courtesy, notice of the *ex parte* Motion to the Subrogation Wildfire Trust, which only learned of the Motion
26 after a third party that was monitoring the docket forwarded it. After the Court pointed out the Motion's failure to name
27 other targets of the proposed subpoena, the Fire Victim Trust filed the Supplement identifying 402 potential targets, but
28 it is unclear whether any notice was provided to those other targets to afford them fair opportunity to be heard on the
Motion. *See Granny Goose Foods, Inc. v. Teamsters*, 415 U.S. 423, 438-39 (1974) (the American system of
jurisprudence "runs counter to the notion of court action taken before reasonable notice and an opportunity to be heard
has been granted both sides of a dispute." (internal citation omitted)); *In re Intermagnetics Am., Inc.*, 101 B.R. 191, 193
(C.D. Cal. 1989) ("[T]he opportunities for legitimate *ex parte* applications are extremely limited.").

1 9. Nor is it “plainly reasonable” (Motion at 10:18-23) to expect the Subrogation
2 Wildfire Trust to produce all documents responsive to the unnecessarily expansive proposed
3 subpoena within fifteen calendar days when there are more than 80,000 Fire Victim Claims (Motion
4 at 3:17).

5 10. Although the scope of discovery permitted under Rule 2004 is broad, “a bankruptcy
6 court might need to limit the normally broad inquiry under Rule 2004 to preserve properly-claimed
7 privileges, or to prevent overly-broad, oppressive or unfair inquiries into topics that are irrelevant to
8 a review of the conduct and assets of debtors.” *In re Symington*, 209 B.R. 678, 687 (Bankr. D. Md.
9 1997). And while Rule 2004 permits investigation of third parties, it does so only to the extent such
10 investigation seeks information to “further the recovery and distribution of the Debtors’ assets or
11 otherwise assist with the administration” of the Debtors’ estate. *See In re Millennium Lab Holdings*
12 *II, LLC*, 562 B.R. 614, 619 (Bankr. D. Del. 2016). Here, any production of claims data by the
13 Subrogation Wildfire Trust to the Fire Victim Trust should be narrowly targeted to the purpose of
14 calculating distributions to Fire Victim Claimants.
15
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17 **B. Conclusion**

18 11. For the reasons set forth above, the Subrogation Wildfire Trust respectfully requests
19 that the Court deny the Motion.
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22 Dated: November 20, 2020

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